JANE DOE, individually and JANE DOE through her power of attorney and mother MARY DOE,

Plaintiff

vs

ERIC MARTZ, SUSAN MARTZ, COLUMBIA MONTOUR SNYDER UNION COUNTIES OF CENTRAL PENNSYLVANIA SYSTEM SERVICES, and CHAS HOUSE,

Defendants

IN THE COURT OF COMMON PLEAS FOR THE 26TH JUDICIAL DISTRICT, MONTOUR COUNTY BRANCH, PENNSYLVANIA
CIVIL ACTION - LAW

CASE NO: 82-2009

APPEARANCES:
PATRICK O'CONNELL, ESQUIRE, Attorney for Plaintiffs
THOMAS E. BRENNER, ESQUIRE, Attorney for Defendants CMSU and Chas House
ROLF E. KROLL, ESQUIRE, Attorney for Susan Martz
ERIC MARTZ, Pro Se

September 15, 2010. JAMES, J.

OPINION

This matter is before the court to consider the summary judgment motion of defendants Columbia Montour Snyder Union Counties of Central Pennsylvania System Services (hereinafter "CMSU") and Chas House, said two defendants hereinafter being referred to collectively as the "Mental Health defendants." Mental Health defendants assert two issues. First, they assert that the evidence

does not establish a prima facie case for "gross negligence" by defendants. Under the Mental Health Procedures Act (50 P.S. §7114), they have immunity for ordinary negligence. Second, they assert that the Mental Health defendants were not negligent in any manner since they owed no duty to plaintiff under these facts.

In summary, plaintiff filed an Amended Complaint alleging that the Mental Health defendants were **grossly** negligent in their failure to adequately supervise Jane Doe who was a resident of Chas House and under the supervision of CMSU. Here are the undisputed facts:

1. CMSU and Chas House are mental health establishments, which provide for the care or rehabilitation of mentally ill persons.
2. Jane Doe was an adult female who suffered from mental health illnesses and was receiving mental health services from CMSU and resided at Chas House.
3. While residing at Chas House, Jane Doe was sexually assaulted by Eric Martz at a home shared by defendants Eric Martz and Susan Martz, Eric's mother.
4. Jane Doe was not declared incompetent by a court of law. She had no legal guardian. Jane Doe had executed a power-of-attorney naming her mother as her power-of-attorney.

5. Jane Doe has certain rights under a Bill of Rights while she was a resident of Chas House. Among the stated rights was the right that "a resident has the right to leave and return to the home at times consistent with Chas House II rules and the resident's service plan." Additionally, the Bill of Rights provided that a resident may "freely associate, organize and communicate with others privately."
6. The Mental Health defendants could not confine Jane Doe to the residential facility, not could they restrict with whom she talked or associated.
7. Mental Health defendants had concerns with Jane Doe's contacts with Eric Martz and banned him the Chas House residential facility.
8. Employees of Chas House counseled Jane Doe that Eric Martz was a sexual predator and warned her that it would not be good for her to associate with him.
9. Nevertheless, Jane Doe did associate with Eric Martz, went to his house, and was tragically and violently assaulted by him.

Mental Health defendants are immune from suit for negligent acts but not from grossly negligent acts. In their summary judgment motion, defendants assert immunity

from liability. The first issue is whether under the undisputed facts of this case, as a matter of law, defendants' acts or omissions constitute gross negligence. If so, they are not immune from liability. If not, they are immune from liability.

The Mental Health Procedures Act states:

> It is the policy of the Commonwealth of Pennsylvania to seek to assure the availability of adequate treatment to persons who are mentally ill, and it is the purpose of this act to establish procedures whereby this policy can be effected. The provisions of this act shall be interpreted in conformity with the principles of due process to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others. Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed. Persons who are mentally retarded, senile, alcoholic, or drug dependent shall receive mental health treatment only if they are also diagnosed as mentally ill, but these conditions of themselves shall not be deemed to constitute mental illness.

50 P.S. §7102 (Statement of Policy).

Furthermore:

> Adequate treatment means a course of treatment designed and administered to alleviate a person's pain and distress and to maximize the probability of his recovery from mental illness. It shall be provided to all persons in treatment who are subject to this act. It may include inpatient treatment, partial hospitalization, or outpatient treatment. Adequate inpatient treatment shall include such accommodations, diet, heat, light, sanitary facilities, clothing,

> recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions. Treatment shall include diagnosis, evaluation, therapy, or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person from mental illness and shall also include care and other services that supplement treatment and aid or promote such recovery.

50 P.S. § 7104 (Provision for Treatment).

In the defining case of Allen v. Montgomery Hospital, 548 Pa. 299, 307, 696 A.2d 1175, 1179 (1997), the Pennsylvania Supreme Court decided that "treatment" included treatment for other ailments while the patient was treated for mental illness. The Court stated:

> Therefore, applying the rules of statutory construction to the immunity provision of Section 114 of the MHPA, we conclude that the General Assembly decided to ameliorate certain risks by granting limited immunity to doctors and hospitals who have undertaken the treatment of the mentally ill, including treatment for physical ailments pursuant to a contract with a mental health facility to provide such treatment. Policy reasons also support this interpretation of the immunity provision in Section 114 of the MHPA. If the provision were interpreted narrowly such as urged by appellees so that it only applied to treatment specifically directed at a mental illness, it could reduce or eliminate the willingness of doctors or hospitals to provide needed medical care to a mentally ill patient who is referred by a mental hospital for medical treatment. Even if doctors or hospitals still provided treatment for physical ailments in such a situation, it could lead such providers of medical care to minimize their risks by placing the mentally ill patients in a more restrictive environment than is necessary or adopting other precautionary measures which would increase the

costs of the medical care provided to the mentally ill. (emphasis provided).

A subsequent Pennsylvania Superior Court case added:

The immunity provision of the MHPA provides in pertinent part as follows:

> § 7114. Immunity from civil and criminal liability
>
> (a) In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person who participates in a decision that a person be examined or treated under this act, ... shall not be civilly or criminally liable for such decision or for any of its consequences. 50 P.S. § 7114(a).

Under the MHPA, a "facility" is "any mental health establishment, hospital, clinic, institution, center, day care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons, whether as outpatients or inpatients." 50 P.S. § 7103. "Treatment" is defined as "diagnosis, evaluation, therapy, or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person from mental illness and shall also include care and other services that supplement treatment and aid or promote such recovery." 50 P.S. § 7104. Thus, we must determine if Crozer was a "facility" providing treatment to Defendant for, if it was, Crozer is immune from suit in the absence of "gross negligence."

Our Supreme Court has determined that the immunity provided by the MHPA extends to institutions, as well as natural persons, that provide care to mentally ill patients. Farago v. Sacred Heart General Hospital, 522 Pa. 410, 562 A.2d 300, 303 (1989). Additionally, our Supreme

> Court has interpreted § 7114(a) to include not only treatment decisions, but also, "'care and other services that supplement treatment' in order to promote the recovery of the patient from mental illness." Allen v. Montgomery Hospital, 548 Pa. 299, 696 A.2d 1175, 1179 (1997).
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> As a hospital that provides inpatient psychiatric care, Crozer is most certainly an institution to which the provisions of the MHPA apply. See Farago, 562 A.2d at 303. Decedent was involuntarily committed to the inpatient psychiatric care of Crozer, and its staff monitored Decedent as part of her medical care. In Allen, our Supreme Court interpreted the MHPA to apply to the daily care and other services provided to a patient as part of the patient's overall psychiatric treatment. See Allen, 696 A.2d at 1179. Therefore, we conclude that the MHPA applies to Crozer and consequently, that the trial court did not err by applying its immunity provisions when it granted summary judgment."

Downey v. Crozer-Chester Medical Center, 817 A.2d 517, 524-525 (Pa.Super. 2003).

Thus, it has been determined by the Pennsylvania courts that the immunity provision of the Mental Health Procedures Act applies to any treatment a patient is receiving in a medical/mental health facility incidental to his or her mental health treatment. In case at bar, there is no question that the complained of treatment, supervision, and residential living was incidental to decedent's mental health issues and treatment. Therefore, the controlling issue is whether the defendants' actions

present a question for a jury or whether gross negligence has not been established sufficiently to present to a jury.

The Superior Court has recently reiterated the definition of "gross negligence":

> Clearly in this case patient is not attempting to prove willful misconduct; therefore, her burden would be to present sufficient facts to the jury from which it could making a finding of gross negligence.
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> Our Supreme Court adopted this court's definition of gross negligence in Albright v. Abington Memorial Hosp., 548 Pa. 268, 696 A.2d 1159 (1997):
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> "It appears that the legislature intended to require that liability be premised on facts indicating more egregiously deviant conduct than ordinary carelessness, inadvertence, laxity, or indifference. We hold that the legislature intended the term gross negligence to mean a form of negligence where the facts support substantially more than ordinary carelessness, inadvertence, laxity, or indifference. The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care." Id. at 278, 696 A.2d at 1164, quoting Bloom v. DuBois Regional Medical Center, 409 Pa.Super. 83, 597 A.2d 671, 679 (1991)."

Walsh v. Borczon, 881 A.2d 1, 7 (Pa.Super. 2005).

In light of the definition of gross negligence, we must decide when a case involving gross negligence is appropriate for jury determination and when is it appropriate for court determination. The Pennsylvania courts have clearly addressed this issue and established

the standard for when a court should decide the issue as a matter of law:

> We recognize that the limited immunity provided by section 7114 would mean little if the persons or entities covered by that provision were required to undergo trial in every case and leave it to a jury to determine if the complained of misdeeds (if there were any) rose to the level of gross negligence.
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> On the very issue of whether the jury has the sole right to determine gross negligence, Justice Cappy declared:
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> > While it is generally true that the issue of whether a given set of facts satisfies the definition of gross negligence is a question of fact to be determined by a jury, a court may take the issue from a jury, and decide the issue as a matter of law, if the conduct in question falls short of gross negligence, the case is entirely free from doubt, and no reasonable jury could find gross negligence.
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> > Id.(Albright) at 1164-65, citing Willett v. Evergreen Homes, Inc., et. al., 407 Pa.Super. 141, 595 A.2d 164 (1991), alloc. denied, 529 Pa. 623, 600 A.2d 539 (1991).

Downey v. Crozer-Chester Medical Center, 817 A.2d 517, 525-526 (Pa.Super. 2003).

Thus, based on the undisputed facts, our determination is whether a prima facie case for **gross negligence** has been established for the Mental Health defendants. More specifically, the issues are whether defendants' conduct falls short of gross negligence; whether the case is

entirely free from doubt; and whether no reasonable jury could find gross negligence.

Plaintiffs argue that the Mental Health defendants had knowledge of Eric Martz's danger as a sexual predator; that the Mental health defendants did not tell Jane Doe's mother who had a power-of-attorney for Jane Doe about Eric Martz's interest in Jane Doe; and that the Mental Health defendants' "limited their efforts to protect Jane Doe" to banning Eric Martz from the property and "speaking with Jane Doe about choices," i.e., warning her. As discussed above, in order to establish gross negligence, the facts must support substantially more than ordinary carelessness, inadvertence, laxity, or indifference. The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care. While it is true that the Mental Health defendants did know of the danger that Eric Martz presented, they actually took action. They banned him from the premises and warned Jane Doe of the danger. Under the Bill of Rights, they could not restrain Jane Doe. She could freely associate with others. She did not have a guardian and had the wherewithal to voluntarily and freely sign a power-of attorney.

In this case, the facts simply do not establish a case for gross negligence. It is not even close. It is not

free from doubt. No reasonable jury could find gross negligence.

The second issue raised by Mental Health defendants is whether the Mental Health defendants had a "duty" to protect Jane Doe from criminal acts committed out side of their facility. In light of the court's determination that the Mental Health defendants are immune since a prima facie case for gross negligence has not been established, it is not necessary to address this issue.

JANE DOE, individually and JANE DOE through her power of attorney and mother MARY DOE, Plaintiff vs ERIC MARTZ, SUSAN MARTZ, COLUMBIA MONTOUR SNYDER UNION COUNTIES OF CENTRAL PENNSYLVANIA SYSTEM SERVICES, and CHAS HOUSE, Defendants	IN THE COURT OF COMMON PLEAS FOR THE 26TH JUDICIAL DISTRICT, MONTOUR COUNTY BRANCH, PENNSYLVANIA CIVIL ACTION - LAW CASE NO: 82-2009

ORDER

AND NOW, this 15th day of September 2010, the Motion for Summary Judgment filed by defendants Columbia Montour Snyder Union Counties of Central Pennsylvania System Services and Chas House is GRANTED and judgment is entered in their favor and against plaintiffs.

BY THE COURT

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HONORABLE THOMAS A. JAMES, JR., J.